

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF TENNESSEE
 CHATTANOOGA DIVISION

TANJA BENTON,

Plaintiff,

v.

BLUECROSS BLUESHIELD OF
 TENNESSEE, INC.,

Defendant.

1:22-CV-118

Chattanooga, Tennessee
 June 27th, 2024

BEFORE: THE HONORABLE CHARLES E. ATCHLEY, JR.
 UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFF:

DOUGLAS S. HAMILL
 MIKEL & HAMILL
 620 Lindsey Street
 Suite 200
 Chattanooga, Tennessee 37403

FOR THE DEFENDANT:

ROBERT E. BOSTON
 JOSEPH T. WOOD
 DAVID ZEITLIN
 HOLLAND & KNIGHT
 511 Union Street
 Suite 2700
 Nashville, Tennessee 37219

JURY TRIAL
 THIRD DAY OF TRIAL
 EXCERPT OF PROCEEDINGS
JURY INSTRUCTIONS

1 (The proceedings were held in the presence of
2 the jury, as follows:)

3 THE COURT: Members of the jury, now it is time
4 for me to instruct you about the law that you must
5 follow in deciding this case. I will start by
6 explaining your duties and the general rules that apply
7 in every single case. Next, I will explain the law
8 related to the allegations made in plaintiff's
9 complaint. Then I will explain some rules you must use
10 in evaluating particular testimony and evidence. Then,
11 last, I will explain the rules that you must follow
12 during your deliberations in the jury room and the
13 possible verdicts you may return.

14 Please listen very carefully to everything I
15 say.

16 Jurors duties. You have two main duties as
17 jurors. The first one is to decide what the facts are
18 from the evidence you saw and heard here in court.
19 Deciding what the facts are is your job, not mine. And
20 nothing that I have said or done during this trial was
21 meant to influence your decision about the facts in any
22 way.

23 Your second duty is to take the law that I give
24 you, apply it to the facts, and decide if plaintiff has
25 proved her case by a preponderance of the evidence. It

1 is my job to instruct you about the law, and you are
2 bound by the oath that you took at the beginning of the
3 trial to follow the instructions that I give you even if
4 I -- even if you personally disagree with them. This
5 includes the instructions that I gave you before and
6 during the trial and these instructions. All the
7 instructions are important, and you should consider them
8 together as a whole.

9 The lawyers have talked about the law during
10 their arguments. But if what they said is different
11 from what I say, you must follow what I say. What I say
12 about the law controls.

13 Perform these duties fairly. Do not let any
14 bias, sympathy, or prejudice you may feel toward one
15 side or the other influence your decision in any way.

16 Preponderance of the evidence. This is a civil
17 case. Plaintiff, Tanja Benton, is the party who brought
18 this lawsuit. Defendant, BlueCross BlueShield of
19 Tennessee, Incorporated, is the party against whom the
20 lawsuit was filed. Plaintiff has the burden of proving
21 her case by what is called the "preponderance of
22 evidence."

23 The term "preponderance of evidence" means
24 plaintiff must prove to you, in light of all the
25 evidence, that what she claims is more likely so than

1 not so. To say it differently, if you were to put the
2 evidence favorable to plaintiff and the evidence
3 favorable to defendant on opposite sides of the scale,
4 plaintiff would have to make the scales tip somewhat on
5 her side. If plaintiff fails to meet her burden on an
6 issue for which she has the burden of proof, the verdict
7 must be for the defendant. If you find after
8 considering all the evidence that a claim or fact is
9 more likely so than not so, then the claim or fact has
10 been proved by a preponderance of the evidence.

11 In determining whether any fact has been proved
12 by a preponderance of the evidence in the case, you may,
13 unless otherwise instructed, consider the testimony of
14 all witnesses, regardless of who -- of who may have
15 called them, and all exhibits received into evidence,
16 regardless of who may have produced them.

17 You may have heard of the phrase "proof beyond
18 a reasonable doubt." That is a stricter standard of
19 proof, and it applies -- and it applies only to criminal
20 cases. It does not apply in civil cases such as this,
21 so you should put it out of your mind.

22 Evidence defined. You must take -- make your
23 decision based only on the evidence that you saw and
24 heard here in court. Do not let rumors, suspicions, or
25 anything else that you may have seen or heard outside of

1 court influence your decision in any way.

2 The evidence in this case includes only what
3 the witnesses said while they were testifying under
4 oath, the exhibits that I allowed into evidence, any
5 stipulations that the lawyers agreed to, and any facts
6 that I have judicially noticed.

7 Nothing else is evidence. The lawyers'
8 statements and arguments are not evidence. Their
9 questions and objections are not evidence. My legal
10 rulings are not evidence, and my comments and questions
11 are not evidence.

12 During the trial, I may not have let you hear
13 the answers to some of the questions that the lawyers
14 asked. I also may have ruled that you could not see
15 some of the exhibits that the lawyers wanted you to see.
16 And sometimes I may have ordered you to disregard things
17 that you saw or heard or I may have struck things from
18 the record. You must completely ignore all of those
19 things. Do not even think about them. Do not speculate
20 about what a witness might have said or what an exhibit
21 might have shown. These things are not evidence, and
22 you are bound by your oath not to let them influence
23 your decision in any way.

24 I also may have instructed you to consider some
25 evidence only for a certain purpose. You must follow

1 those instructions and consider that evidence only for
2 the purpose that I told you it was to serve. Make your
3 decision based only on the evidence as I have defined
4 them -- as I have defined it here and nothing else.

5 Consideration of evidence. You are to consider
6 only the evidence in the case. You should use your
7 common sense in weighing the evidence. Consider the
8 evidence in light of your everyday experience with
9 people and events and give it whatever weight you
10 believe it deserves. If you -- if your experience tells
11 you that certain evidence reasonably leads to a
12 conclusion, you are free to reach that conclusion.

13 In our lives, we often look at one fact and
14 conclude from it that another fact exists. In law, we
15 call this an "inference." A jury is allowed to make
16 reasonable inferences, unless otherwise instructed. Any
17 inferences you make must be reasonable and must be based
18 on the evidence in the case. The existence of an
19 inference does not change or shift the burden of proof
20 from the plaintiff to the defendant.

21 Corporation not to be prejudiced. The fact
22 that a corporation is a party must not influence you in
23 your deliberations or in your verdict. Corporations and
24 persons are equal in the eyes of the law. Both are
25 entitled to the same fair and impartial treatment and to

1 justice by the same legal standards.

2 Stipulations. In this case, the plaintiff and
3 the defendant have agreed or stipulated to certain
4 facts. Therefore, you must accept the following
5 stipulated facts as proved:

6 One, plaintiff's employment with BlueCross
7 BlueShield of Tennessee began on July 8, 2005.

8 Plaintiff held the position of biostatistical
9 research scientist from July 2010 through the end of her
10 employment with BlueCross BlueShield of Tennessee.

11 As a biostatistical research scientist,
12 plaintiff was assigned to employer-sponsored group
13 health plans -- these are BlueCross BlueShield of
14 Tennessee clients -- and for many of her clients, at
15 least once per year per client, presented to
16 representatives of each client assigned to her.

17 Prior to the COVID-19 pandemic, plaintiff
18 almost always conducted client presentations in person.

19 BlueCross BlueShield of Tennessee notified
20 plaintiff via email on August 11, 2021, that her
21 position would be subject to BlueCross BlueShield of
22 Tennessee's COVID-19 vaccination requirement. BlueCross
23 BlueShield of Tennessee further advised plaintiff that
24 she should submit -- that she could submit a religious
25 accommodation request regarding BlueCross BlueShield of

1 Tennessee's COVID-19 vaccine requirement.

2 Six, on August 27, 2021, BlueCross BlueShield
3 of Tennessee notified plaintiff that vaccination against
4 COVID-19 would be required for her role by October 4,
5 2021, and, again, reminded plaintiff that she could
6 submit a religious accommodation request.

7 Seven, on or about September 15, 2021,
8 plaintiff submitted to BlueCross BlueShield of Tennessee
9 a religious accommodation request concerning the
10 COVID-19 vaccination requirement.

11 Eight, on September 27, 2021, BlueCross
12 BlueShield of Tennessee denied plaintiff's proposed
13 accommodation request and offered, as an alternative
14 accommodation, that for an initial period of 30 days
15 subject to reevaluation and potential extension
16 depending on BlueCross BlueShield of Tennessee's
17 assessment of the evolving environment and circumstances
18 posed by COVID-19. This is known as the "accommodation
19 period," which was described to plaintiff as follows:

20 One, BlueCross BlueShield of Tennessee would
21 modify temporarily plaintiff's job responsibilities and
22 requirements, though that -- so that she could satisfy
23 all other responsibilities of her job despite not being
24 fully vaccinated; two, plaintiff's public-facing
25 interactions would be removed from her role during the

1 accommodation period; three, plaintiff could use the
2 accommodation period to pursue other positions within
3 BlueCross BlueShield of Tennessee then not subject to
4 the vaccine mandate; and, four, plaintiff could use the
5 accommodation period to reevaluate whether to become
6 vaccinated against COVID-19.

7 Number nine, plaintiff accepted the offered
8 accommodation under protest;

9 10, plaintiff's employment with BlueCross
10 BlueShield of Tennessee ended on November 4, 2021.

11 11, BlueCross BlueShield of Tennessee ended
12 plaintiff's employment because she did not comply with
13 BlueCross BlueShield of Tennessee's COVID-19 vaccination
14 requirement applicable to positions BlueCross BlueShield
15 of Tennessee deemed public facing;

16 12, before plaintiff's employment with
17 BlueCross BlueShield of Tennessee ended, her base salary
18 was \$116,350.

19 Direct and circumstantial evidence. Now, some
20 of you may have heard the terms "direct evidence" and
21 "circumstantial evidence." Direct evidence is simply
22 evidence like the testimony of an eyewitness, which, if
23 you believe it, directly proves a fact. If a witness
24 testified that he saw it raining outside and you
25 believed him, that would be direct evidence that it was

1 raining.

2 Circumstantial evidence is simply a chain of
3 circumstances that indirectly proves a fact. If someone
4 walked into the courtroom wearing a raincoat covered
5 with drops of water and carrying a wet umbrella, that
6 would be circumstantial evidence from which you could
7 conclude that it was raining.

8 It is your job to decide how much weight to
9 give the direct and circumstantial evidence. The law
10 makes no distinction between the weight that you should
11 give to either one, and does not say that one is better
12 evidence than the other. You should consider all the
13 evidence, both direct and circumstantial, and give it
14 whatever weight you believe it deserves.

15 Credibility of witnesses. Another part of your
16 job as jurors is to decide how credible or believable
17 each witness was. This is your job, not mine. It is up
18 to you to decide if a witness's testimony was believable
19 and how much weight you think it deserves. You are free
20 to believe everything that a witness said or only part
21 of it or none of it at all. But you should act
22 reasonably and carefully in making these decisions.

23 Let me suggest some things for you to consider
24 in evaluating each witness's testimony.

25 Ask yourself if the witness was able to clearly

1 see or hear the events. Sometimes even an honest
2 witness may not be able to see or hear what was
3 happening and may make a mistake.

4 Ask yourself how good the witness's memory
5 seemed to be. Did the witness seem able to accurately
6 remember what happened?

7 Ask yourself if there was anything else that
8 may have interfered with the witness's ability to
9 perceive or remember the events.

10 Ask yourself how the witness acted while
11 testifying. Did the witness appear honest? Or did the
12 witness appear to be lying?

13 Ask yourself if the witness had any
14 relationship to either of the parties or anything to
15 gain or lose from the case that might influence the
16 witness's testimony.

17 Ask yourself if the witness had any bias or
18 prejudice or reason for testifying that might cause the
19 witness to lie or to slant the testimony in favor of one
20 side or the other.

21 Ask yourself if the witness testified
22 inconsistent -- inconsistently while on the witness
23 stand, or if the witness said or did something or failed
24 to say or do something at any time that is inconsistent
25 with what the witness said while testifying. If you

1 believe that the witness was inconsistent, ask yourself
2 if this makes the witness's testimony less believable.
3 Sometimes it may; other times it may not. Consider
4 whether the inconsistency was about something important
5 or about some unimportant detail. Ask yourself if it
6 seemed like an innocent mistake or if it seemed
7 deliberate.

8 And ask yourself how believable the witness's
9 testimony was in light of all the other evidence. Was
10 the witness's testimony supported or contradicted by
11 other evidence that you found believable? If you
12 believe that a witness's testimony was contradicted by
13 other evidence, remember that people sometimes forget
14 things and that even two honest people who witness the
15 same event may not describe it exactly the same way.

16 These are only some of the things that you may
17 consider in deciding how believable each witness was.
18 You may also consider other things that you think shed
19 some light on the witness's believability. Use your
20 common sense and your everyday experience in dealing
21 with other people, and then decide what testimony you
22 believe and how much weight you think it deserves.

23 Use of deposition. A deposition is the sworn
24 testimony of a witness taken before trial. The witness
25 is placed under oath and swears to tell the truth and

1 lawyers for each party may ask questions. A court
2 reporter is present and records the questions and
3 answers.

4 Testimony -- deposition testimony is entitled
5 to the same consideration and is to be judged, insofar
6 as possible, in the same way as if the witness had been
7 present to testify.

8 Lawyers' objections. There's one more general
9 subject that I want to talk to you about before I begin
10 explaining the elements of the claims made. The lawyers
11 for both sides objected to some of the things that were
12 said or done during the trial. Do not hold that against
13 either side. The lawyers have a duty to object when --
14 whenever they think that something is not permitted by
15 the rules of evidence. Those rules are designed to make
16 sure that both sides receive a fair trial.

17 And do not interpret my rulings on their
18 objections as any indication of how I think the case
19 should be decided. My rulings are based on the rules of
20 evidence, not on how I feel about the case. Remember
21 that your decision must be based only on the evidence
22 that you saw -- that you saw and heard here in court.

23 Definitions of the claims at issue. That
24 concludes the part of my instructions explaining your
25 duties and the general rules that apply in every civil

1 case. I will now explain the elements of plaintiff's
2 claims against the defendant.

3 Prohibition against religious discrimination in
4 the workplace. Title VII of the Federal Civil Rights
5 Act of 1964 prohibits an employer from discriminating
6 against an employee because of his or her religion. One
7 type of religious discrimination is an employer's
8 failure to reasonably accommodate an employee's
9 sincerely held religious beliefs. When an employment
10 requirement conflicts with an employee's sincerely held
11 religious belief and the employer knows of the
12 employee's belief, the law requires that the employer
13 accommodate the employee's religious belief, unless the
14 employer demonstrates that it is unable to reasonably
15 accommodate the employee's religious belief without
16 undue hardship to the employer's business.

17 Title VII does not demand mere neutrality with
18 regard to religious practices, that they be treated no
19 worse than other practices; rather, it gives them
20 favored treatment, affirmatively obligating employers
21 not to fail or refuse to hire or discharge any
22 individual because of such individual's religious
23 observance and practice. Title VII requires otherwise
24 neutral policies to give way to the need for an
25 accommodation.

1 Like federal law, Tennessee law also prohibits
2 an employer from discriminating against an employee
3 because of the employee's religion. The duty of
4 employers to make reasonable accommodations to the
5 sincerely held religious beliefs of employees has been
6 incorporated into Tennessee law. A religious
7 accommodation claim is analyzed in the same manner under
8 both federal and state law.

9 Religious accommodation claim elements. In
10 this case, the plaintiff -- plaintiff's claims -- the
11 plaintiff claims that the defendant discriminated
12 against her by failing to reasonably accommodate her
13 sincerely held religious beliefs against COVID
14 vaccination. To establish her claim, the plaintiff must
15 prove by a preponderance of the evidence three elements:
16 One, she holds a sincere religious belief that conflicts
17 with an employment requirement; two, she informed the
18 defendant about the conflict; and, three, she was
19 discharged for failing to comply with the conflicting
20 employment requirement.

21 In this case, only the first element is in
22 dispute, i.e., whether plaintiff's objection to the
23 COVID vaccination requirement was based upon a sincerely
24 held religious belief. The second and third elements
25 have been met.

1 BlueCross's affirmative defenses to elements of
2 plaintiff's claim -- excuse me -- to elements of
3 plaintiff's case. If the plaintiff proves her case, the
4 defendant may show it is not liable if it proves by a
5 preponderance of the evidence either, one, that it
6 offered the plaintiff a reasonable accommodation, or,
7 two, that it could not have reasonably accommodated the
8 plaintiff's religious beliefs without undue hardship.

9 Protection of sincerely held religious beliefs.
10 Only sincerely held religious beliefs warrant protection
11 under the law. To determine whether an activity
12 qualifies as the kind of religious belief that merits
13 accommodation, you should look to whether the beliefs
14 professed by the employee are sincerely held and whether
15 they are, in the employee's own scheme of things,
16 religious.

17 Under the law, "religion" includes all aspects
18 of religious observance and practice as well as belief
19 that are, in the plaintiff's own scheme of things,
20 religious. When determining if an observance, belief,
21 or practice is religious, the following factors you may,
22 but are not required to, consider are: First, a
23 religion addresses fundamental and ultimate questions
24 having to do with deep and imponderable matters.
25 Second, a religion is comprehensive in nature. It

1 consists of a belief system as opposed to an isolated
2 teaching. Third, a religion often can be recognized by
3 the presence of certain formal and external signs. The
4 law's protections apply whether the religious beliefs or
5 practices in question are common or non-traditional and
6 regardless of whether they are recognized by any
7 organized religion.

8 Social, political, and economic philosophies,
9 as well as mere personal preferences, are not religious
10 beliefs protected by Title VII. However, overlap
11 between a religion and political belief does not place
12 the belief outside the scope of the law's religious
13 protections as long as the belief is part of a
14 comprehensive belief system and is not simply an
15 isolated teaching.

16 When evaluating sincerity, your finding will
17 depend on your assessment of the -- the plaintiff's
18 credibility and whether you believe she is honest about
19 her religious belief. Factors that might undermine the
20 plaintiff's credibility include, but are not limited to,
21 whether she has behaved in a manner inconsistent with
22 the professed belief, whether the accommodation sought
23 is particularly -- is a particularly desirable benefit
24 that is likely to be sought for secular reasons, and
25 whether the timing of the request renders it suspect.

1 Evidence tending to show that an employee acted
2 in a manner inconsistent with her professed religious
3 beliefs is relevant to your assessment of the
4 plaintiff's credibility, and it should not be assumed
5 that an employee's beliefs are insincere simply because
6 some of his or her practices deviate from the commonly
7 followed tenets of his or her religion or because the
8 employee adheres to some common practices but not
9 others.

10 Whether an accommodation is reasonable. If an
11 employer offers any accommodation that is reasonable,
12 even if the accommodation is not plaintiff's preferred
13 accommodation, then the employer has met its duty under
14 the law. The reasonableness of an employer's attempt at
15 accommodation must be determined on a case-by-case basis
16 in the time of the events. What may be a reasonable
17 accommodation for one employee may not be reasonable for
18 another.

19 An accommodation is reasonable if it removes
20 the conflict between the employment requirement and the
21 plaintiff's religious beliefs, unless the accommodation
22 would cause the employee to lose a benefit of employment
23 enjoyed by all other employees who do not share the same
24 religious conflict. The employer bears the burden of
25 proving that it has offered a reasonable accommodation

1 by a preponderance of the evidence.

2 No bilateral cooperation required if reasonable
3 accommodation offered. The law requires affirmative
4 action by the employer to help resolve, if possible, the
5 conflict between the employee's religious beliefs and
6 the employer's rule or policy. An employer cannot
7 merely assess the reasonableness of a particular
8 possible accommodation -- accommodation suggested by the
9 employee. Instead, an employer must consider other
10 options to resolve the employee's religious conflict.
11 But where the employer has already reasonably
12 accommodated the employee's religious needs, the
13 statutory inquiry is at an end. The employer need not
14 further show that each of the employees's alternative
15 accommodations would result in undue hardship.

16 Undue hardship. An employer must accommodate
17 an employee's religious beliefs unless the employer is
18 unable to reasonably accommodate an employee's religious
19 beliefs without undue hardship on the conduct of the
20 employer's business. For purposes of this case, the
21 phrase "undue hardship" means substantial increased
22 costs in relation to the conduct of the defendant's
23 particular business.

24 In determining whether accommodating the
25 plaintiff's religious beliefs would constitute an undue

1 hardship, you must consider all the relevant factors in
2 the case at hand, including the particular
3 accommodations at issue and their practical impact in
4 light of the nature, size, and operating cost of the
5 defendant.

6 Undue hardship can encompass more than the
7 financial burden to the employer. Employers may
8 consider intangible costs, such as, for example, the
9 loss of office efficiency or the safety risk an
10 accommodation could pose to others, the effect on the
11 plaintiff's coworkers and resultant ramifications it has
12 for the conduct of the employer's business, damage to
13 the employer's ability to achieve its mission, or damage
14 to the employer's public image.

15 Whether hardship is undue requires you to
16 undertake an individualized analysis of the duties and
17 responsibilities of the plaintiff in the context of the
18 employer's business.

19 BlueCross BlueShield of Tennessee has the
20 burden of proving undue hardship by a preponderance of
21 the evidence.

22 Back pay damages and mitigation. If, under the
23 Court's instructions, you find that the defendant
24 engaged in the discriminatory -- discriminatory actions
25 alleged by the plaintiff and you find that the

1 plaintiff's damages were legally caused by the
2 defendant's discriminatory actions, then you shall award
3 the plaintiff the actual damages she has sustained.

4 For wrongful loss of employment, plaintiff
5 shall be awarded back pay damages and the present value
6 of any lost employment benefits. Back pay is the sum of
7 wages the plaintiff would have earned from the date of
8 termination of employment through today's date. The
9 plaintiff has a duty to mitigate her back pay damages.
10 Any back pay and employment benefits you award the
11 plaintiff shall be reduced by any employment earnings
12 and benefits the plaintiff earned or could have earned
13 through reasonable diligence. The defendant has the
14 burden of establishing that the plaintiff failed to use
15 reasonable diligence in -- in mitigating damages. The
16 defendant must prove both the availability of suitable
17 and comparable substitute employment and the lack of
18 reasonable diligence on the part of the plaintiff.

19 Compensatory damages. In addition to back pay
20 damages, you shall award a sum of money to compensate
21 the plaintiff for any non-wage damages the plaintiff
22 suffered as a legal result of the plaintiff's unlawful
23 actions. This is sometimes referred to as "compensatory
24 damages." Compensatory damages may be awarded for
25 embarrassment, humiliation, emotional pain, suffering,

1 inconvenience, mental anguish, loss of enjoyment of
2 life, and other nonpecuniary losses.

3 The words "embarrassment" and "humiliation" are
4 used in their everyday meaning. Not every embarrassment
5 and humiliation, however, is compensable. Embarrassment
6 and humiliation are compensable only when a reasonable
7 person with ordinary sensibilities under the same or
8 similar circumstances would be embarrassed and
9 humiliated. There is no mathematical formula for
10 computing reasonable compensation for compensatory
11 damages, nor is it -- is the opinion of any witness
12 required as to the amount of such compensation. In
13 making an award for such damages, you must use your best
14 judgment and establish an amount of damages that is fair
15 and reasonable in light of the evidence before you.

16 Punitive damages. If you find that the
17 plaintiff -- if you find for the plaintiff, you may, but
18 are not required to, assess punitive damages against
19 BlueCross BlueShield of Tennessee. The purposes of
20 punitive damages are to punish a defendant for its
21 conduct and to serve as an example or warning to the --
22 to BlueCross BlueShield of Tennessee and others not to
23 engage in similar conduct in the future.

24 To be eligible for punitive damages, the
25 plaintiff must prove, by a preponderance of the

1 evidence, that punitive damages should be assessed
2 against BlueCross BlueShield of Tennessee. You may
3 assess punitive damages only if you find that the
4 conduct of BlueCross BlueShield of Tennessee's
5 managerial employees or officers was done with malice or
6 in the reckless disregard of the plaintiff's rights. An
7 action in which -- an action is with malice if a person
8 knows that it -- it violates the law and does it anyway.
9 An action is a reckless -- is in reckless disregard of
10 the plaintiff's rights if taken with knowledge that it
11 may violate the law.

12 In determining whether an employee or officer
13 was a managerial employee of BlueCross BlueShield of
14 Tennessee, you should consider the kind of authority
15 BlueCross BlueShield of Tennessee gave her or him, the
16 amount of discretion she or he had in carrying out job
17 duties, and the manner in which she or he carried them
18 out. You should not, however, award the plaintiff
19 punitive damages if BlueCross BlueShield of Tennessee
20 proves that it made a good-faith effort to implement an
21 antidiscrimination policy.

22 If you decide to award punitive damages, you
23 will not assess an amount of punitive -- punitive
24 damages at this time. You will, however, report your
25 finding to the Court.

1 Deliberations and verdict. That concludes the
2 part of my instructions explaining the rules for
3 considering some of the testimony and evidence and the
4 law that applies in this case.

5 Now let me finish up by explaining some things
6 about your deliberations in the jury room and your
7 possible verdicts.

8 The first thing that you should do in the jury
9 room is choose someone to be your foreperson. This
10 person will help to guide your discussions and will
11 speak for you here in court.

12 Once you start deliberating, do not talk to
13 Ms. Camp or to me or to anyone else except each other
14 about the case. If you have any questions or messages,
15 you must write them down on a piece of paper, sign them,
16 and then give them to Ms. Camp. Ms. Camp will give them
17 to me, and I will -- I will respond as soon as I can. I
18 may have to talk to the lawyers about what you have
19 asked, so it may take me some time to get back to you.
20 Any questions or messages normally should be sent to me
21 through your foreperson.

22 One more thing about messages. Do not ever
23 write down or tell anyone how you stand on your votes.
24 For example, do not write down or tell anyone that you
25 are split 3-3 or 4-2 or whatever your vote happens to

1 be. That should stay secret until you're finished.

2 Experiments, research, investigation, and
3 outside communications. Remember that you must make
4 your decision based only on the evidence -- based only
5 on the evidence that you saw and heard here in court.
6 For example, do not conduct any experiments inside or
7 outside the jury room. Do not bring any books like a
8 dictionary or anything else with you to help you with
9 your deliberations. Do not conduct any independent
10 research, reading, or investigation about the case, and
11 do not visit any of the places that were mentioned
12 during the trial.

13 During your deliberations, you must not
14 communicate with or provide any information to anyone by
15 any means about this case. You may not use any
16 electronic devices or media, such as a telephone, cell
17 phone, smartphone, iPhone, Android, or computer, the
18 Internet, any Internet service, or any text or instant
19 messaging service, or any Internet chat room, blog, or
20 website, such as Facebook, Instagram, LinkedIn, YouTube,
21 or Twitter, to communicate to anyone any information
22 about this case or to conduct any research about this
23 case until I accept your verdict.

24 In other words, you cannot talk to anyone on
25 the phone, correspond with anyone, or electronically

1 communicate with anyone about -- about this case. You
2 can only discuss the case in the jury room with your
3 fellow jurors during deliberations. I expect you will
4 inform me as soon as you become aware of another juror's
5 violations of these instructions.

6 You may not use these electronic means to
7 investigate or communicate about the case because it is
8 important that you decide this case based solely on the
9 evidence presented in this courtroom. Information on
10 the Internet or available through social media might be
11 wrong, incomplete, or inaccurate. You are only
12 permitted to discuss the case with your fellow jurors
13 during deliberations because they have seen and heard
14 the same evidence you have. In our judicial system, it
15 is important that you're not influenced by anything or
16 anyone outside of this courtroom. Otherwise, your
17 decision may be based on information known only by you
18 and not your fellow jurors or the parties in the case.
19 This would unfairly and adversely impact the judicial
20 process.

21 A juror who violates these restrictions
22 jeopardizes the fairness of these proceedings, and a
23 mistrial could result, which would require the entire
24 trial process to start over.

25 Duty to deliberate, unanimous verdict. Now

1 that all the evidence is in and the arguments are
2 complete, you are free to talk about the case in the
3 jury room. In fact, it is your duty to talk with each
4 other about the evidence and to make every reasonable
5 effort you can to reach unanimous agreement because your
6 verdict, whether it is for the plaintiff or the
7 defendant, must be unanimous.

8 Talk with each other, listen carefully and
9 respectfully to each other's views, and keep an open
10 mind as you listen to what your fellow jurors have to
11 say. Try your best to work out your differences. Do
12 not hesitate to change your mind if you're convinced
13 that other jurors are right and that your original
14 position was wrong.

15 But do not ever change your mind just because
16 other jurors see things differently or just to get the
17 case over with. In the end, your vote must be exactly
18 that, your own vote. It is important for you to reach
19 unanimous agreement, but only if you can do so honestly
20 and in good conscience. The verdict must represent the
21 considered judgment of each juror.

22 No one will be allowed to hear your discussions
23 in the jury room, and no -- and no record will be made
24 of what you say. So you should feel free to speak your
25 minds.

1 Listen carefully to what other jurors have to
2 say, and then decide for yourself if plaintiff has
3 proved her case by a preponderance of the evidence.

4 Juror notes. Remember that if you elected to
5 take notes during the trial, your notes should be used
6 only as memory aids. You should not give your notes
7 greater weight than your independent recollection of the
8 evidence. You should rely upon your own independent
9 recollection of the evidence or lack of evidence, and
10 you should not be unduly influenced by the notes of
11 other jurors.

12 Notes are not entitled to any more weight than
13 the memory or impression of each juror. Whether you
14 took notes or not, each of you must form and express
15 your own opinion as to the facts of the case.

16 Court has no opinion. Let me finish up by
17 repeating something that I said to you earlier. Nothing
18 that I have said or done during this trial was meant to
19 influence your decision in any way. You decide for
20 yourselves the issues presented in this case.

21 And then, lastly, I have your verdict form. It
22 will be back there with you with your instructions.
23 It's titled at the top. It has the caption of this
24 case, United States District Court, Eastern District of
25 Tennessee at Chattanooga. It has the plaintiff, the

1 defendant listed. Tanja Benton, plaintiff; BlueCross
2 BlueShield of Tennessee, Incorporated, defendant. And
3 it has my name over here and a case number. And then it
4 says "verdict form."

5 We, the jury, unanimously answer the following
6 questions:

7 Question one: Has the plaintiff, Tanja Benton,
8 proven by a preponderance of the evidence that her
9 refusal to receive the COVID vaccination was based upon
10 a sincerely held religious belief?

11 There's a place to check "yes" and a place to
12 check "no."

13 If you answered "yes," please proceed to the
14 next question. If you answered "no," then your
15 deliberations are at an end. Please have the foreperson
16 sign and date this form and return it to the court
17 officer.

18 Question two, has the defendant, BlueCross
19 BlueShield of Tennessee, proven by a preponderance of
20 the evidence that it offered a reasonable accommodation
21 to the plaintiff?

22 There's a place to check "yes" and a place to
23 check "no."

24 If you answered "yes," then your deliberations
25 are at an end. Please have the foreperson sign and date

1 this form and return it to the court officer. If you
2 answered "no," please proceed to the next question.

3 Question number three, has the defendant,
4 BlueCross BlueShield of Tennessee, proven by a
5 preponderance of the evidence that it could not
6 reasonably accommodate the plaintiff's religious beliefs
7 without undue hardship?

8 A place to check "yes" and a place to check
9 "no."

10 If you answered "yes," then your deliberations
11 are at an end. Please have the foreperson sign and date
12 this form and return it to the court officer. If you
13 answered "no," please proceed to the next question.

14 Question number four, under the law as given to
15 us in the Court's instructions, we award the following
16 damages to the plaintiff, Tanja Benton:

17 Back pay damages.

18 There's a blank space.

19 Compensatory damages.

20 There's a blank space.

21 Question five, if you awarded damages of any
22 type in response to question four, do you find that the
23 plaintiff, Tanja Benton, has proven by a preponderance
24 of the evidence that she is entitled to punitive
25 damages?

1 A place to check "yes" and a place to check
2 "no." Sign and date below and alert the courtroom
3 deputy that you have reached a verdict. And then
4 there's a place for the jury -- jury foreperson to print
5 their name and sign this document and date it.

6 All right. Ladies and gentlemen, I'm now going
7 to ask you to retire to the jury room and to deliberate.

8 (Subsequent proceedings were heard but
9 not requested to be transcribed herein.)

10 THE COURT: Ladies and gentlemen, you have
11 decided that the plaintiff is entitled to punitive
12 damages. You must use sound reasoning in setting the
13 amount of these damages. Punitive damages, if any,
14 should be in an amount sufficient to fulfill the
15 purposes that I have described to you, but should not
16 reflect bias, prejudice, or sympathy toward either or
17 any party. The plaintiff has the burden of proving by a
18 preponderance of the evidence the amount of punitive
19 damages that you should award.

20 In making your decision, you must consider the
21 instructions I have already given you and also the
22 following:

23 One, the objectionable nature of the
24 defendant's wrongdoing, the impact of the defendant's
25 conduct on the plaintiff, and the relationship of the

1 parties;

2 Two, the defendant's awareness of the amount of
3 harm being caused and the defendant's motivation in
4 causing the harm;

5 Three, the duration of the defendant's
6 misconduct and whether the defendant attempted to
7 conceal the conduct;

8 Four, the amount of money the plaintiff has
9 spent in the attempt to recover the losses;

10 Five, whether defendant profited from the
11 activity, and if so, whether the punitive award should
12 be in excess of the profit in order to deter similar
13 future behavior;

14 Six, the number and amount of previous punitive
15 damage awards against the defendant based upon the same
16 wrongful act;

17 Seven, whether once the misconduct became known
18 to the defendant, the defendant tried to remedy the
19 situation or offered a prompt and fair settlement for
20 the actual harm caused;

21 And, eight, any other circumstances shown by
22 the evidence that bears on determining the proper amount
23 of the punitive award.

24 You have already awarded the plaintiff
25 compensatory damages for the purpose of making the

1 plaintiff whole. The purpose of an award for punitive
2 damages is to punish the wrongdoer and to deter
3 misconduct by the defendant or others. You may consider
4 some or all of these factors in your decision, and you
5 should give them such weight you believe they deserve.

6 Remember and apply the instructions I have
7 already given you. An award of punitive damages is
8 discretionary: that is, having found that the legal
9 requirements for punitive damages are satisfied, you may
10 ultimately decide to award punitive damages or you may
11 decide not to award them. The amount you determine to
12 award the plaintiff for punitive damage damages, if any,
13 must be unanimous.

14 And I'm going to send you back with another
15 verdict form. It's titled "verdict form for punitive
16 damages phase."

17 It says, "We, the jury, unanimously answer the
18 following questions:

19 "One, what amount of punitive damage" --
20 damages, if any, do you award the plaintiff?"

21 And there is a space there for you to write a
22 number in there. Sign and date below, and alert the
23 courtroom deputy that you have reached a verdict. Jury
24 foreperson to write name and then sign and date.

25 All right. Ladies and gentlemen, I'm going to

1 ask you to retire and deliberate on this issue.

2 (Subsequent proceedings were heard but
3 not requested to be transcribed herein.)

4 END OF PROCEEDINGS

5 I, Stephanie Fernandez, do
6 hereby certify that I reported in machine shorthand the
7 proceedings in the above-styled cause, and that this
8 transcript is an accurate record of said proceedings.

9 s/Stephanie Fernandez
10 Stephanie Fernandez,
11 Official Court Reporter
12
13
14
15
16
17
18
19
20
21
22
23
24
25